

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

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| CHARLES JOSEPH, | : | |
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| Petitioner, | : | |
| | : | |
| v. | : | CASE NO. 4:08-CV-128 CDL |
| | : | |
| MICHAEL B. MUKASEY and | : | 28 U.S.C. § 2241 |
| RAYMOND A. SIMONSE | : | Habeas Corpus Petition |
| | : | |
| Respondents. | : | |

REPORT AND RECOMMENDATION

Petitioner's Application for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, is before this court for preliminary consideration under Rule 4 of the Rules Governing Section 2254 Proceedings For The United States District Courts. After preliminary examination, it appears that Petitioner's Application for Federal Writ of Habeas Corpus under 28 U.S.C. § 2254 is subject to summary dismissal.

Petitioner is a native and citizen of Antigua. A review of his previous filings reveals that the current § 2241 application is Petitioner's third attempt at federal habeas relief after an Order of Removal was entered against him following his August 17, 2007, conviction in the Superior Court of Colquitt County, Georgia, of solicitation of sodomy of a minor. In his first petition, case number 4:08-CV-1, the Court denied Petitioner's application for federal habeas relief on June 10, 2008. No certificate of appealability to the Eleventh Circuit Court of Appeals was filed by Petitioner. Petitioner's second petition, case number 4:08-CV-90, was dismissed for his failure to pay the filing fee.

Title 28, U.S.C. § 2244(b)(3)(A) provides that “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Therefore, this Court is without jurisdiction to review Petitioner’s § 2241 petition until such time as the Eleventh Circuit Court of Appeals grants his motion to file a second or successive petition.

WHEREFORE, IT IS HEREBY RECOMMENDED that Petitioner’s present action be DISMISSED WITHOUT PREJUDICE for Petitioner to seek authorization from the Eleventh Circuit Court of Appeals to file a second or successive petition. Pursuant to 28 U.S.C. § 636 (b)(1), Petitioner may serve and file written objections to this Recommendation with the United States District Judge WITHIN TEN (10) DAYS after being served with a copy hereof.

SO RECOMMENDED, this 16th day of September, 2008.

S/ G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE

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